

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Traversal of Restriction

Restriction is proper only when (1) the restricted inventions are independent or patentably distinct, and (2) when there is a serious burden on the Examiner (MPEP 803). The burden is on the Examiner to provide reasons and/or examples in support of restriction (MPEP 803). Further, requirements to restrict should have two aspects: (1) the reasons why the inventions are independent/distinct, and (2) reasons for insisting upon restriction (MPEP 808).

In the particular case of product and process, such inventions are distinct if the product claimed can be made another process materially different than the claimed process.

It is not believed that distinctness has been established as the process relied upon in the restriction requirement is not materially different than the claimed process.

The restriction requirement has divided the claims into a group I (claims 1-6) drawn to a product, and a group II (claims 7-20) drawn to a process of making. The rejection recites the following process of making in support of the restriction requirement.

silicon nitride formed by a CVD method.

Applicants' invention of group II is not materially different. Claim 7 recites the following:

forming a silicon nitride film...

There does not appear to be any material difference between the process relied upon in the restriction requirement and that of claim 7. There is no language in claim 7 that would limit the formation of the silicon nitride film to any particular process.

Accordingly, because distinctness has not been established, this ground for rejection is withdrawn.

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Respectfully Submitted,

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